

1693 and 1694. SIR ALEXANDER COCKBURN of LANTON'S CREDITORS *against* Him.

1693. *February 23.*—On the report of Newbyth and Rankeilor, the Lords found Lanton had paid the tack-duty of 1690 and 1691, to his creditors, though he had misapplied it; and therefore declared, that such as had received payment of their annualrents, who were not preferable, should receive no more till the whole others had also got their annualrents; and exonered their bond to be given up; and that he should find caution for 1692, and what he should uplift or possess of 1693; otherwise, not to continue any longer factor, but the creditors to have present access to the estate. *Vol. I. Page 564.*

1694. *June 15.*—The petition given in by the creditors of Sir Alexander Cockburn of Lanton, against him, with his answers, are advised; and, *1mo.* The Lords find the creditors ought to accept of his assignation to his usher's salary, due by the Exchequer *anno* 1691, in place of caution, and as a security *pro tanto* of his tack-duty; but prejudice to consider, if his paying the creditors who had right to the said fee, with the rents of the lands, was not a misapplication, to the prejudice of those who had right to the lands. *2do.* The question occurred, If he should find caution for the present crop 1694 now, or at the separation of it from the ground, seeing gentlemen would not willingly engage for him till they saw the corns in; and, on the other hand, there is no factor allowed to intromit till he find caution.

The Lords fell on this medium,—That he should find caution for the current year, sometime before the session rose; and fixed the 20th July next, that the Lords might have time to determine any objections that might arise anent the sufficiency of the cautioners offered; with certification, if he fail, he should be removed from being any longer factor. *Vol. I. Page 620.*

*July 27.*—Sir Alexander Cockburn of Lanton and his preferable creditors were heard; and at last the Lords removed Lanton from the factory and administration, in regard he had not, *debito tempore*, found caution. But he having intermeddled with the grass part of the crop, they declared he should continue till Michaelmas next, and intromit also with the corns, providing he found caution, in August, to make it forthcoming to the preferable creditors, as they are ranked: and ordained a roup to be made of the estate, on the first Wednesday of October next, not to exceed seven years, and not under three; but, with this quality, that, if the estate be sold before the expiration of these three years, the purchasers shall not be bound by the tack to be set longer than the said three years; and ordained placards and intimations to be published at the adjacent church-doors, and that he who bids most shall immediately, in October next, enter to, till, and sow the ground for crop 1695. *Vol. I. Page 640.*

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1694. *July 27.* MR PATRICK HOME, Advocate, *against* MR GEORGE DICKSON of BUGHTRIG.

IN the sale of Mr George Dickson of Bughtrig's lands, on the statute of bankruptcy, pursued by Mr Patrick Home, advocate,—it was ALLEGED for Mr

George, By the 17th Act of Parliament 1681, the debtor's whole estate must be valued and sold, else it cannot be known whether he be bankrupt or not; because they might leave out such portions of it as would do much more than pay his debts. And *ita est* Sir Patrick, in adducing a probation of Mr George's estate, has only led it in relation to his lands of Bughtrig, and omitted altogether a right of comprising he had on the estate of Lumisden, which Sir Patrick undervalued, because he had bought these lands without it. Two things stuck with the Lords, *viz.* 1mo. That, in such illiquid rights, where they had not obtained possession, it was hard to put an estimate and value thereon; for neither could the summons of the apprising be the rule, nor the value of the lands appraised, till its rank and preference were known, and the rent of the appraised lands. 2do. If the Lords, in the sale of bankrupts' lands, considered any more but their clear liquid accessible estates, whereof they were in possession, then not one of ten of those sales would be perfected; because they would always obtrude their claims and pretences they have by appraisings, or otherwise, upon third parties' estates. Which moved the plurality of the Lords not to regard such rights as sufficient to stop the sale. Some were of opinion that the word *estate*, in the Act of Parliament, comprehended *jura, nomina, et actiones*, as well as lands and immoveables, and that the whole behoved to be exposed to sale; though, if bidders do not occur for the whole, it might be sold in parcels. The case is of great importance, and has inconveniences on both sides. The balance must fall where they are least.

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1694. July 28. ————— Hog, a Messenger, *against* GIELS DOUGLASS.

ON a bill given in by Hog, a messenger, against Giels Douglass, who pursued him before the Lyon and his brethren, by the subsidiary action, for payment of a debt, because he had suffered George Campbell, the debtor, to escape; and he advocated on this reason,—That he had accepted of the caption with this express quality and condition, That he should not be obliged to break up Mr William Thomson's closet, in whose house he was alleged to lurk. To this it was ANSWERED, 1mo. This was against his oath of admission to serve the lieges faithfully, and was against the will of the letters allowing him to break up any doors in quest of the rebel. REPLIED, 1mo. *Pactis privatorum derogatur jure publico.* 2do. A messenger was fined at Privy Council for breaking up a writer's closet where his writs lay; and may be embezzled by the messenger's associates, though he should be answerable for his men. But the second answer took off his defence *in totum, viz.* That they offered to prove he accepted simply, without any such quality.

The Lords remitted the cause back to the Lyon Herald. *Vol. I. Page 640.*

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1694. July 28. ALISON FLETCHER, Petitioner; and ANNE LOCH *against* The EARL of SOUTHESK.

ALISON Fletcher, relict of John Graham, postmaster, on a bill, gets a year's